

TOWN OF BEAUX ARTS VILLAGE, WASHINGTON

ORDINANCE NO. 100

AN ORDINANCE prescribing and enforcing a permit system relative to the issuance of permits for substantial developments, conditional uses and variances under the Town of Beaux Arts Village Shoreline Management Act of 1971 Master Program, as amended, and amending the Town of Beaux Arts Village Shoreline Management Act of 1971 Master Program to include the permit system.

WHEREAS, on December 3, 1973, the Town Council of the Town of Beaux Arts Village passed Ordinance No. 89 establishing a Master Program for the shorelines of the Town of Beaux Arts Village and on May 7, 1974, passed Ordinance No. 95, amending and ratifying Ordinance No. 89; and

WHEREAS, on May 7, 1974, the Town Council for the Town of Beaux Arts Village, Washington, passed Resolution No. 33 which found that the adoption of the Master Program for the shorelines of the Town of Beaux Arts Village was a major project with insignificant effect on the environment; and

WHEREAS, a permit system regulating and enforcing the issuance of permits for substantial developments on the shorelines of the Town of Beaux Arts Village, and for conditional uses and variances to the Master Program is necessary to implement the Master Program; **NOW, THEREFORE**,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, as follows:

Section 1. PURPOSE . The purpose of this ordinance is to implement a permit system whereby the development of the shorelines to the Town will be regulated in a manner consistent with the Shoreline Management Act of 1971 and the Town's Master Program, as amended. So that the Town's Master Program will be contained in an integrated document, this ordinance amends by addition Ordinance No. 89, as amended.

Section 2. DEFINITIONS. As used in this ordinance, unless the context otherwise requires, the following definitions and concepts apply:

1. "Council" means the Town Council of the Town of Beaux Arts Village.
2. "Department" means the Washington State Department of Ecology.
3. "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals, including the grading of land; bulkheading; driving of piling, placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal use of

the surface of the waters overlying lands subject to this ordinance at any state of water level.

4. "Conditional Use" means uses which may be permitted to locate in shoreline areas, but generally do not need, or depending on the environment, are not considered to be suitable for sitting in shoreline location.

5. "Master Program" means the Master Program of the Town of Beaux Arts Village, as amended, passed in accordance with and pursuant to the Shoreline Management Act of 1971.

6. "Ordinary High Water Mark" on all lakes and streams is that mark which will be found by examining the bed and banks and ascertaining whether presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter.

7. "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state of any local governmental unit however designated.

8. "Shorelines of the Town" means all of the water areas within or bordering the Town of Beaux Arts Village, and associated wetlands, together with the lands underlying them.

9. "Substantial development" means any development of which the total cost or fair market value exceeds One Thousand Dollars (\$1,000.00) or any development which materially interferes with the normal use of the water or Shorelines of the Town; except that the following shall not be considered substantial developments for the purpose of this ordinance:

(a) normal maintenance, repair or replacement of existing structures or developments, including, for example, damage by accident, fire or elements;

(b) construction of normal protective bulkhead to single family residence;

(c) emergency construction necessary to protect the property from damage by the elements;

(d) construction of a barn or similar agricultural structure on wetlands;

(e) construction or modification of navigational aids such as channel markers and anchor buoys;

(f) construction on wetlands by an owner, lessee or contract purchaser of a single family residence and appurtenances for his own use or for the use of his family, which residence with appurtenances does not exceed a height of 35 feet above the average grade level and

which meets all requirements of the state agency or local government having jurisdiction thereof other than requirements imposed pursuant to this ordinance.

(g) construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee or contract purchaser of a single-family residence, the cost of which does not exceed two thousand five hundred dollars.

(h) any project with a certification from the Governor pursuant to RCW 80.50.

10. "Substantial development permit" means the Shoreline Management substantial development permit provided for in Section 5 of this Ordinance and in Section 14 of the Shoreline Management Act of 1971 (RCW 90.58.140).

11. "Town" means the Town of Beaux Arts Village.

12. "Variance" means an alteration of the use regulations of the Master Program.

13. "Wetlands" or "Wetland areas" means those lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams and lakes which are subject to the provisions of this ordinance; the same to be designated as to location by the Department.

Section 3. DEVELOPMENTS. No development shall be undertaken on the shorelines of the Town unless the following conditions have been fulfilled:

1. The development is consistent with the policy of the Shorelines Management Act of 1971, as amended, and, after adoption and approval, as appropriate, the applicable guidelines, regulations, and the Town's Master Program; and

2. The Council has issued a letter of exemption for that development; or

3. If the development is a substantial development, the Council has issued a substantial development permit for that development; or

4. If the development constitutes a conditional use, the Council has issued a conditional use permit for that development; or

5. If the development requires a variance, the Council has issued a variance for that development.

Section 4. LETTER OF EXEMPTION. Prior to the commencement of any development on the Shorelines of the Town which the person undertaking such development believes to be exempt from the requirements of a substantial development permit, conditional use permit or variance, application shall be made by the person undertaking such development to the Council for a letter of exemption.

1. Application. Application for a letter of exemption shall be made on a form provided by the Council. Such application shall be made at least two weeks prior to the next regularly scheduled Council meeting.

2. Procedure. At the next regularly scheduled Council meeting falling at least two weeks after the receipt of an application for a letter of exemption the Council shall hold an open hearing on the application and determine whether or not to issue a letter of exemption for the development for which the application was made. In reviewing the application for a letter of exemption, the Council shall consider the policy of the Shorelines Management Act of 1971, as amended, the applicable guidelines and regulations, the Town's Master Program and the requirements of substantial development permits, conditional use permits and variances. If a majority of a quorum of the Council determines by vote that the development for which the letter of exemption is sought is exempt from the requirements of a substantial development permit, conditional use permit or variance, the Council shall issue a letter of exemption for the development. If the majority of a quorum of the Council determines by vote that the development for which the letter of exemption is sought is not exempt from the requirements of a substantial development permit, conditional use permit or variance, the Council shall issue a letter denying exemption for the development.

3. Within eight days of making its determination on an application for a letter of exemption, the Council shall deliver by certified mail to the applicant, the Department and the Washington State Attorney General, a copy of the application and a copy of its letter of exemption or its letter denying exemption for the development. No development pursuant to a letter of exemption shall begin nor shall it be authorized until fourteen days from the receipt of such letter of exemption or until all review proceedings initiated within fourteen days of the receipt of such letter of exemption have been terminated.

Section 5. SUBSTANTIAL DEVELOPMENT PERMITS.

1. Requirement of a Permit No substantial development shall be undertaken on the Shorelines of the Town without first obtaining a substantial development permit from the Council. A permit shall be granted:

(a) From the effective date of this ordinance until such time as the Town's Master Program has become effective, only when the proposed substantial development is consistent with:

- (i) the policy of Section 2 of the Shoreline Management Act of 1971; and
- (ii) after their adoption, the guidelines and regulations of the Department; and
- (iii) so far as can be ascertained, the Master Program being developed for the Town.

(b) After adoption or approval, as appropriate, by the Department of the Town's Master Program, only when the proposed development is consistent with the Town's Master Program, the policy of Section 2 of the Shoreline Management Act of 1971 and the guidelines and regulations of the Department.

2. Application.

(a) Application for a substantial development permit shall be made with the Council on a form provided by the Council, which form shall be submitted by the property owner, lessee, contract purchaser, or other person entitled to possession of the property, or by an authorized agent.

(b) Each application for a substantial development permit shall be accompanied by either an environmental impact statement or, if the applicant believes the development is not a major action significantly affecting the quality of the environment, an assessment of the environmental consequences of the development.

(c) A filing fee in an amount sufficient to pay the costs necessarily incurred by the Council as a result of the application for a substantial development permit may be charged in whole or part at the time the permit application is submitted to the Council or may be charged in whole or part at a later time when the costs are more readily ascertainable.

3. Notice

(a) Upon submittal of a proper application for a substantial development permit to the Council, the applicant shall, at his or her own expense, publish notices of the application at least once a week on the same day of the week for two consecutive weeks in the Bellevue American, post a copy or copies of the notice of application on a conspicuous place on the property upon which the substantial development is proposed, and mail copies of the notice to all the latest recorded real property owners within three hundred (300) feet of the boundary of the property upon which the substantial development is proposed. Affidavits of publication, posting and mailing shall be transmitted by the applicant to the Council and affixed to the application. Notices of application shall not be published, posted or mailed prior to the actual submission of the application to the Council.

(b) The notices of application shall be in a form substantially similar to that supplied by the Council. Additionally, the notices shall state that a public hearing shall be held on the application at the next regularly scheduled Council meeting which falls no sooner than thirty days following the last of the final publication, posting or mailing of such notice; shall designate the location of such meeting; and shall invite the public to comment on the application in writing prior to such meeting or in person at such meeting.

4. Procedure

(a) The Council shall consider all of the following when reviewing an application for a permit:

- (i) the application;
- (ii) the environmental impact statement or environmental assessment;

- (iii) written comments from interested persons submitted prior to the public hearing or oral comments made by interested persons at the public hearing;
- (iv) information and comments, if any, from other state and local entities and agencies;
- (v) independent study of the Council; and
- (vi) other evidence presented at the public hearing.

(b) The Council may require that an applicant furnish information in addition to the information required in the application forms prescribed.

(c) The burden shall be on the applicant to prove that the proposed development is consistent with the criteria set forth in this ordinance.

(d) The public hearing on the application shall be conducted as part of the Council's regularly scheduled meeting. A majority of the Council shall constitute a quorum and a vote of the majority of a quorum shall determine the matter voted upon. If, for any reason, testimony on any matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the Council may, before adjournment or recess of such matters under consideration, publicly announce the time and place of the continued hearing and post a notice of the time and place of the continued hearing in a conspicuous spot at the place where the hearing was begun.

(e) Within fifteen days of the conclusion of the public hearing upon the application, the Council shall make and enter written findings from the record and conclusions thereof which support its order and the findings and conclusions shall set forth the manner in which the decision is consistent with the criteria set forth in Section 5.1 of this ordinance.

(f) The decision of the Council shall be the final decision of the Town on all applications and the Council shall render its written decision, including findings, conclusions and a final order, and transmit copies of its decision to the persons who are required to receive copies of the decision pursuant to Section 5.6 of this ordinance.

5. Scope of Permit. The following time requirement shall apply to all substantial development permits:

(a) Construction or substantial progress towards construction of a project for which a permit has been granted pursuant to this ordinance must be undertaken within two years after the approval of the permit by the Council, or the permit shall terminate. If such progress has not been made, a new permit will be necessary.

(b) No permit authorizing construction shall extend for a term more than five years. If a project for which a permit has been granted has not been completed within five years after the approval of the permit by the Council, the Council shall, at the expiration of the five-year period, review the permit, and upon a showing of good cause, extend the permit for one year, otherwise, the permit terminates; PROVIDED, That no permit shall be extended unless the applicant has requested such review and extension prior to the permit expiration date; PROVIDED FURTHER, That if a project for which a permit has been

granted has not been completed within five years after the approval of the permit by the Council, the Council may, at its discretion, require the permittee to terminate construction of the project and restore the land to its natural condition within six months of the expiration of the five-year period provided above.

6. Granting or Denial of Permits.

(a) Within eight days of making and entering its written findings and conclusions, as required by Section 5.4(e) of this ordinance, the Council shall deliver by certified mail to the following persons copies of the application, the approval or conditional approval of a substantial development permit application, and any other written evidence of the final order:

- (i) the applicant;
- (ii) the Department;
- (iii) the Washington State Attorney General;
- (iv) any person who has submitted to the Board written comments on the application; and
- (v) any person who has written the Council requesting notification.

(b) Development pursuant to a substantial development permit shall not begin and shall not be authorized until forty-five days from the date the Council files the approved substantial development permit with the Department and Attorney General, or until all review proceedings initiated within forty-five days of the date of such filing have been terminated.

(c) In granting a permit, the Council may attach thereto such conditions, modifications and restrictions regarding the location, character and other features of the proposed development as it finds necessary to make the permit compatible with the criteria set forth in this section of this ordinance. Such conditions may include the requirement to post a performance bond assuring compliance with other permit requirements, terms, and conditions.

(d) Issuance of a substantial development permit does not obviate requirements for other federal, state, county and town permits, procedures and regulations.

7. Rescission.

(a) Any substantial development permit granted pursuant to this ordinance may be rescinded or modified upon a finding by the Council that the permittee has not complied with the conditions of his permit.

(b) The Council may initiate rescission and modification proceedings by serving written notice of noncompliance on the permittee.

(c) Before a permit can be rescinded or modified, a public hearing shall be held by the Council no sooner than ten days following the service of notice upon the permittee.

(d) In the event the Council determines that there is an emergency, it may request the Marshall to serve upon the permittee in the same manner as process is served for a civil action a cease and desist order suspending any construction or action pursuant to the permit until such time, which shall be no later than ten days following the service of the cease and desist order, as the Council may hold a public hearing on the rescission of the permit.

Section 6. CONDITIONAL USE PERMITS. It is understood that there may be special circumstances or a special type or style of conditional use that would make shoreline setting of special cases acceptable to the goals, policies and intentions of the Master Program. The objective of this provision is to provide more control and flexibility for implementing the regulations of the Town's Master Program.

Any conditional use on the shorelines of the Town requires a conditional use permit before such use may be undertaken. The procedure for obtaining permission to create or conduct a conditional use is the same as the substantial development permit procedure, except that the applicant must supply in addition whatever evidence, information or agreements to assure the Council that the following conditions will be met:

- (a) The use will cause no significant adverse effects on the environment or other uses.
- (b) The use will not interfere with inhabitants on the Town's use of the Shorelines of the Town.
- (c) Design of the program will be compatible with the surroundings and the Master Program.
- (d) The proposed use will not be contrary to the general intent of the Master Program.

Granting and approval of a conditional use permit shall occur only if extraordinary circumstances are shown and the public suffers no substantial detrimental effect. Should the Council approve the request, the specific conditions of approval, i.e., any specific required structures, designs, or actions of the applicant, will be written on the permit issued to the applicant. The scope of the permit shall be limited as is provided in Section 5.5 of this ordinance.

Conditional use permits must be approved by the Department and do not take effect until such approval is obtained.

Section 7. VARIANCES. It is understood that this ordinance may cause unnecessary hardships in particular situations, or that this ordinance might be unreasonable in light of new evidence, technology, or other special circumstances, and that the goals and policies of the Master Program may not necessarily be served by the strict application of this ordinance. Therefore, when a person feels that such special conditions apply to him, he can request a variance from the provisions of this ordinance. A variance shall not be used to obtain permission for a use not permitted in the applicable environment.

The variance procedure is the same as and may be part of the substantial development permit procedure.

In addition to the other material required in the application for a substantial development permit, the applicant for a variance must identify each of the provisions in this ordinance that he wishes a variance for. Further, the applicant must supply evidence, information and his rationale for each variance sought. This additional material must be, at least from the viewpoint of the applicant, sufficient to satisfy the Council that:

- (a) The hardship which serves as a basis for granting of the variance is specifically related to the property of the applicant.
- (b) The hardship results from the application of the requirements of the Shoreline Management Act of 1971 and the Master Program and not from, for example, deed restrictions or the applicant's own actions.
- (c) The variance granted will be in harmony with the general purpose and intent of the Master Program.
- (d) Public welfare and interest will be preserved. If more harm will be done to the area by granting the variance than will be done to the applicant by denying it, the variance will be denied.

Failure to satisfy any one of the above will result in denial of the variance. The remainder of the variance procedure is identical to that for a conditional use. Permits for variances must be approved by the Department and do not take effect until approved by the Department.

Section 8. SANCTIONS. Each and every criminal and civil sanction and remedy available under Sections 21, 22 and 23 of the Shoreline Management Act of 1971 shall be available for violations of this ordinance.

Section 9. LAKE WASHINGTON REGIONAL GOALS AND POLICIES.

Recognizing the restrictive covenants in its original deed which, along with their limitations on public use, shall remain paramount, the Town hereby adopts the Lake Washington Regional Goals and Policies and incorporates the same by reference into the Town's Master Program.

Section 10. AMENDMENT TO MASTER PROGRAM. The Town's Master Program, as amended, is hereby amended to incorporate the provisions of this ordinance.

PASSED by the Town Council at a regular meeting thereof and
APPROVED by the Mayor of the Town of Beaux Arts Village, Washington, this 5th day of November, 1974.

/s/ Roland A. Adolphson

Mayor

ATTEST:

/s/ Nadine Cook

Town Clerk